

**MASTER PLAN SERVICES AGREEMENT
NEWPORT MUNICIPAL AIRPORT**

 **ORIGINAL**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and **WH Pacific**, an Oregon corporation, which has a principal who is a professional aviation planner of the State of Oregon (Consultant).

RECITALS

- A.** City issued an RFP for Airport Master Plan planning services, seeking a qualified consulting firm to assist the City on the Airport Master Plan project that the City does not have resources to complete in-house. The RFP sought consultants to assist on the Airport Master Plan. The RFP anticipated that the City could select a specific proposer for a specific areas of expertise.
- B.** City needs aviation planning assistance in completing the Airport Master Plan related to the Newport Municipal Airport.
- C.** City has selected the Consultant as the best qualified proposer with the expertise to provide planning services the Airport Master Plan project and desires to engage the Consultant to render professional planning services for Airport Master Plan project. Consultant is willing and qualified to perform such services.

TERMS OF AGREEMENT

1. Consultant's Scope of Services

Consultant shall perform professional planning services related to the Airport Master Plan project as described in Exhibit C. This Agreement does not require the City to utilize Consultant for any or all projects related to the Newport Municipal Airport. The City is free to utilize other consultants for Airport projects as it deems appropriate.

2. Effective Date and Duration

This agreement is effective on execution by both parties and shall expire, unless otherwise terminated or extended, upon project completion on or before date specified in Exhibit C. The parties may extend the term by mutual agreement.

3. Consultant's Fee and Schedules

A. Fee

Maximum not to exceed fees for services under this Agreement shall be based on rates shown in Exhibit A. Consultant may increase the rates shown in Exhibit A on an annual basis, subject to the written approval of the City. Consultant will alert the City when Consultant is increasing its fees. Consultant will bill for progress payments on a monthly basis. Consultant will invoice monthly progress payments based on actual time worked on the project. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially completed may

be paid for in proportion to the degree of completion.

Consultant may from time to time be asked to perform consultation services not related to a specific project. In such instances, if services are less than \$5,000, a written Task Order will not be required, and Consultant will be reimbursed at the rates shown in Exhibit A,

Consultant will be reimbursed for direct charges such as the cost of printing, postage, delivery services, and subconsultant fees. Unless specifically noted in the Task Order, direct charges will be billed at cost without any markup. Office expenses such as computer cost, telephone calls, and overhead expenses are incidental and are included in the hourly rates shown in Exhibit A.

B. Payment Schedule for Basic Fee

Payments shall be made within 30 days of receipt of monthly billings based on the work completed. Payment by the City shall release the City from any further obligation for payment to the Consultant for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Contingency Tasks

When agreed to in writing by the City, Consultant shall provide services described as Contingency Tasks in a Task Order.

D. Certified Cost Records

Consultant shall furnish certified cost records for all billings to substantiate all charges. Consultant's accounts shall be subject to audit by the City. Consultant shall submit billings in a form satisfactory to the City. At a minimum, each billing shall identify the Task Order under such work is performed, work completed during the billing period, percentage of work completed to date, and percentage of budget used to date for each task.

E. Identification

Consultant shall furnish to the City its employer identification number.

F. Schedule

Consultant shall provide services under this Agreement in accordance with the Project Schedule of each Task Order.

4. Ownership of Plans and Documents: Records; Confidentiality

A. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

1) Consultant Intellectual Property means any intellectual property owned by

Consultant and developed independently from this Agreement that is applicable to the Services or included in the Work Product.

- 2) Third Party Intellectual Property means any intellectual property owned by parties other than City or Consultant that is applicable to the Services or included in the Work Product.
- 3) Work Product means the Services Consultant delivers or is required to deliver to City under this Agreement. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, whether completed, partially completed or in draft form.

B. Work Product

- 1) City acknowledges that the Work Product created by Consultant are expressions of Consultant's intellectual property and, therefore, instruments of professional service. Nevertheless, all final Work Product created by Consultant pursuant to this Agreement shall be the exclusive property of City upon Consultant's completion of Work Product and upon City's payment to Consultant of all undisputed amounts due and owing to Consultant. Authorship, including the right of the Copyright, shall remain with Consultant.
- 2) In the event Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on City's behalf and in the name of City, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property, including the right of City to authorize contractors, Consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.
- 3) In the event Work Product created by Consultant under this Agreement is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of City to authorize contractors, Consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Agreement.
- 4) In the event Work Product created by Consultant under this Agreement is a derivative work based on Third Party Intellectual Property, or a compilation that includes Third Party Intellectual Property, Consultant shall secure on City's behalf and in the name of City an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property, including the right to authorize contractors, Consultants and others to use the pre-existing elements of the Third Party Intellectual Property, for the purposes described in this Agreement.

- 5) To the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, Consultant shall be indemnified and held harmless by City from liability arising out of re-use or alteration of the Work Product by City which was not specifically contemplated and agreed to by the Parties in this Agreement. City agrees, to the fullest extent permitted by law, to indemnify, defend, and hold Consultant from and against any claim, liability, or cost (including reasonable attorney's fees and costs of defense) arising or allegedly arising out of any unauthorized reuse or modification of the instruments of professional service or Consultant Intellectual Property by City or by any person or entity that acquires or obtains such instruments of professional services by or through City with the express written authorization of Consultant
- 6) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects
- 7) Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

C. Confidential Information

- 1) Consultant acknowledges that it or its employees, Sub-Consultants, subcontractors or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of City or City's residents. Any and all information provided by City and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-consultants, subcontractors or agents in the performance of this Agreement shall be deemed to be confidential information of City ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that City designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by City to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than City without the obligation of confidentiality; (e) is disclosed with the written consent of City; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- 2) Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce,

sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to City under this Agreement, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise City immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with City in seeking injunctive or other equitable relief in the name of City or Consultant against any such person. Consultant agrees that, except as directed by City, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at City's request, Consultant will turn over to City all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 3) Consultant acknowledges that breach of this Section 4, including disclosure of any Confidential Information, will give rise to irreparable injury to City that is inadequately compensable in damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of this Section 4, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of City and are reasonable in scope and content.

5. Assignment/Delegation

Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other. If City agrees to assignment of tasks to a subcontractor, Consultant shall be fully responsible for the acts or omissions of any subcontractors. Any approval of a subcontractor does not create a contractual relationship between the subcontractor and City.

6. Consultant is Independent Contractor

- A. The City's project director, or designee, shall be responsible for determining whether Consultant's work product is satisfactory and consistent with this Agreement, but Consultant is not subject to the direction and control of the City. Consultant shall be an independent contractor for all purposes and shall not be entitled to compensation other than the compensation provided for under Section 3 of this Agreement. The City's acceptance of the work product as satisfactory does not relieve the Consultant from responsibility for any errors in the work product.
- B. Consultant is an independent contractor and not an employee of City. Consultant acknowledges Consultant's status as an independent contractor and acknowledges that Consultant is not an employee of the City for purposes of workers compensation law,

public employee benefits law, or any other law. All persons retained by Consultant to provide services under this Agreement are employees of Consultant and not of City. Consultant acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Consultant is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of the Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make as a result of the finding.

- C. The Consultant represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Consultant, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- D. Consultant and its employees, if any, are not active members of the Oregon Public Employees Retirement System.
- E. Consultant certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

- A. The City has relied upon the professional ability and training of the Consultant as a material inducement to enter into this Agreement. Consultant represents to the City that the work under this Agreement will be performed in accordance with the degree of skill and care ordinarily exercised by members of the same profession as Consultant currently practicing under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws in effect for the duration of this Agreement, it being understood that acceptance of a Consultant's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Consultant of any responsibility for design deficiencies, errors or omissions.
- B. Consultant shall hold harmless and indemnify the City, its officers, authorized agents, and employees from actual costs from losses, direct costs, and expenses that result from the negligent or otherwise wrongful acts or omissions of Consultant or its authorized agents or employees or anyone for whose acts Consultant is held to be legally liable for under this Agreement. Such includes, but is not limited to, claims for bodily injury, illness or death, or property damage to the extent caused by Consultant's negligent or otherwise wrongful acts or omissions on a comparative basis of fault with City. This indemnification does not extend to indemnification for negligent or otherwise wrongful acts or omissions of the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder

of this indemnification. The parties understand and accept that any liability, including defense costs, on the part of Contractor shall be strictly conditioned upon and in proportion to a finding of professional negligence by Contractor, as adjudicated by a court of competent jurisdiction. Subject to the foregoing, the parties expressly agree that this indemnity provision does not include, and in no other event shall Contractor be required to assume any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Agreement or the services rendered by Contractor.

Notwithstanding anything herein to the contrary, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Consultant or City, or their employees, agents, subconsultants or subcontractors.

- C. Consultant shall save and hold harmless the City, its officers, authorized agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Consultant or its subcontractors, sub-consultants, agents or employees in performance of professional services under this Agreement. Any design work by Consultant that results in a design of a facility that does not comply with applicable laws including but not limited to relating to current requirements of the Federal Aviation Administration (FAA) and accessibility for persons with disabilities shall be considered a professionally negligent act, error or omission.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Consultant, regardless of the type of claim made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Consultant unrelated to the quality of professional services provided by Consultant.

8. Insurance

Consultant and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement as detailed in this section. The insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Consultant and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form with policy limits of at least per occurrence. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement.

B. Professional Liability

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,300,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

D. Workers' Compensation Insurance

The Consultant, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.

E. Additional Insured Provision

The Commercial General Liability Insurance Policy shall include the City its officers, directors, and employees as additional insureds with respect to this Agreement. Coverage will be endorsed to provide a per project aggregate.

F. Extended Reporting Coverage

If any of the liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Consultant's insurer will provide if less than 24 months. Consultant will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Consultant shall furnish a Certificate of Insurance to the City. No Agreement shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the address below ten days prior to coverage expiration.

J. Primary Coverage Clarification

The parties agree that Consultant's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Copy of Policy or Certificate of Insurance

A cross-liability clause or separation of insureds clause will be included in the general liability policy required by this Agreement. Consultant's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without 30 days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Melissa Román
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

Thirty days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance. The procuring of the required insurance shall not be construed to limit Consultant's liability under this agreement. The insurance does not relieve Consultant's obligation for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Consultant. If City terminates the Agreement pursuant to this section, it shall pay Consultant for all undisputed invoices rendered to the date of termination.

10. Termination With Cause

- A.** City may terminate this Agreement effective upon delivery of written notice to Consultant, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Consultant, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B.** City, by written notice of default (including breach of Agreement) to Consultant, may terminate this Agreement:

- 1)** If Consultant fails to provide services called for by this Agreement within the time specified, or
- 2)** If Consultant fails to perform any of the other provisions of this Agreement, or fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

- C.** If City terminates this Agreement, Consultant shall be entitled to payment for services provided prior to the termination date.

- D.** Damages for breach of Agreement shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

- E.** Consultant may terminate this Agreement upon giving City seven (7) days prior written notice for any of the following reasons:

- 1)** Breach by City of any material term of this Agreement, including but not limited to the payment terms;
- 2)** Changes in the material conditions under which the Agreement was entered into coupled with a failure of the parties to negotiate an accord regarding the fees, changes, schedules relating to those changes.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Consultant of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Notice

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

IF TO CITY OF NEWPORT:

Melissa Román, PMP
City of Newport
169 SW Coast Highway
Newport, OR 97365
m.roman@newportoregon.gov
541.574.3377

IF TO CONSULTANT:

Rainse Anderson, PE
Director of Aviation
9755 SW Barnes Rd, Ste 300
Portland, OR 97225
randerson@whypacific.com
503.372.3521

The date of deposit in the mail shall be the notice date for first class mail.

All other notices, bills and payments shall be effective at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Force Majeure

Neither City nor Consultant shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest,

volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractors or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. Non-Discrimination

Consultant agrees to comply with all applicable requirements of federal and state statutes, rules, and regulations. By way of example only, Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

16. Errors

City shall promptly report to Consultant any defects or suspected defects of which City becomes aware so that Consultant may take reasonable measures to mitigate the consequences of such defect. City agrees to impose a similar notification requirement on all its contractors and subcontractors at any level. Failure by City or by City's contractors and subcontractors to provide timely notification of defect or suspected defect in service to Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

17. Extra Work

Extra work or work on Contingency Tasks is not authorized unless the City authorizes the additional or contingency work in writing. Failure of Consultant to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to unauthorized extra work and Consultant shall be entitled to no compensation for the performance of any extra work not authorized in writing.

18. Governing Law

The Agreement is subject to Oregon law. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court in Newport, Oregon.

19. Compliance With Applicable Law

Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including but not limited to those set forth in ORS 279A, B & C. Those provisions required to be within the contract are set forth in Exhibit B.

20. Reserved

21. Access to Records

City shall have access to the books, documents, papers and records of Consultant that are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

22. Audit

Consultant shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the Agreement period. Consultant agrees to permit City or its duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

23. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

24. Industrial Accident Fund Payment

Consultant shall pay all contributions or amount due the Industrial Accident Fund that Consultant or subcontractors incur during the performance of this Agreement.

25. Complete Agreement

This Agreement and any exhibit(s) hereto and any and all Task Orders executed by the parties and the RFP and Consultant dated **9 January 2015** constitute the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Any waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. In the event of a conflict between the documents comprising this Agreement, interpretation shall occur in the following manner: 1) each individual Task Order; 2) this Agreement and any exhibits hereto; and 3) the RFP and Response. The following exhibits are attached to this Agreement:

- A. Exhibit A – Scope of Work and Fee Schedule;
- B. Exhibit B – Oregon Public Contracting Requirements for Personal Service Contracts
- C. Exhibit C – RFP and Consultant's Proposal
- D. Exhibit D – FAA Clauses

26. Miscellaneous

- A. Consultant agrees that news releases and other publicity relating to the subject of this Agreement will be made only with the prior written consent of City.
- B. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of City when using, having access to, or creating systems for any of City's computers, data, systems, personnel, or other information resources.

By their signatures hereunder, the parties acknowledge they have read and understand this Agreement and agree to be bound by its terms. This Agreement is effective on the date last signed below by a party below:

CITY OF NEWPORT:

Spencer Nebel

Spencer Nebel, City Manager

Date: 09-01-15

Approved as to Form

[Signature]

City Attorney

WH PACIFIC:

Rainse E. Anderson

By: Rainse E. Anderson

Its: Director of Aviation

Date: 8/19/15